

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

CITY OF KANSAS CITY, MISSOURI, RESPONDENT,

v.

CHUNG HOE KU, ET AL, APPELLANT; RANDALL LANDES, RESPONDENT.

DOCKET NUMBER WD69807

DATE: February 17, 2009

Appeal From:

JACKSON COUNTY CIRCUIT COURT

THE HONORABLE BRIAN CURTIS WIMES, JUDGE

Appellate Judges:

Division Two: Joseph P. Dandurand, P.J., Harold L. Lowenstein and James M. Smart, JJ.

Attorneys:

Rhonda E. Smiley, Esq., Kansas City, MO., **for appellant.**

Theodore T. Anderson, Esq., Kansas City, MO., **for respondent.**

MISSOURI APPELLATE COURT OPINION SUMMARY COURT OF APPEALS – WESTERN DISTRICT

CITY OF KANSAS CITY,

RESPONDENT,

V.

CHUNG HOE KU, ET AL,

APPELLANT.

WD69807

Jackson County

Before Division Two Judges: Joseph P. Dandurand, P.J., Harold Lowenstein and James Smart, JJ.

Chung Ho Ku and Myong Suk Ku appeal the judgment of the Circuit Court of Jackson County condemning real estate owned by the Kus.

Affirmed.

Division Two holds:

The Kus argue four points on appeal. The points are denied, and the judgment is affirmed.

First, the Kus argue that there was no substantial evidence that the City engaged in good faith negotiations before filing a condemnation suit. They assert that City's appraisal of their property did not comply with the Uniform Standards of Professional Appraisal Practice (USPAP), and thus the City, in basing its offer on the appraisal, did not make a good faith offer to purchase. However, the statute specifically addressing condemnation proceedings only requires appraisers to use generally accepted appraisal practices, and there was trial testimony that the City's appraisal used generally accepted appraisal practices. Moreover, there was substantial evidence before the trial court that the City's appraisal did comply with USPAP.

Second, the Kus assert that there was neither substantial evidence nor a factual finding by the court that the City complied with statutory time limitations in adopting the city ordinance authorizing condemnation. The Kus raise this issue for the first time on appeal, however, and such issues are not preserved for review. If the Kus had a legitimate claim that the City had not complied with the statutory time limit, it was incumbent upon the Kus to raise the issue at trial, and they did not.

Third, the Kus contend that there was no substantial evidence to support a legislative determination of blight and the blight determination was arbitrary, capricious, and induced by fraud, collusion or bad faith. Under the applicable law, a condemnor must only prove that an area is a social or economic liability,

not both, as argued by the Kus. In addition, the City Council relied on several blight studies in making its determination, and the Kus failed to allege or offer any evidence of how any agreement made was illegal or fraudulent.

Fourth, the Kus argue that the judgment was barred by the doctrines of res judicata and collateral estoppel. The Kus do not establish the necessary requirements for either a successful res judicata or collateral estoppel argument. The Kus argue that in a previously filed condemnation petition in which the City attempted to obtain the Kus' property that the circuit court granted the Kus's motion to dismiss, thereby barring any future attempt at condemnation of their property by the City. The City's earlier petition was not, however, dismissed on the merits. Res judicata and collateral estoppel therefore do not apply.

Opinion by: Joseph P. Dandurand, Judge

February 17, 2009

THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
